

PROPOSED:  
*New Jersey Register*  
May 3, 2004  
36 N.J.R. 2134 (a)

HIGHER EDUCATION

COMMISSION ON HIGHER EDUCATION

Rules and Procedures for Implementation of the Higher Education Facilities Trust  
Fund Act

Proposed Readoption with Amendments: N.J.A.C. 9A:15

Authorized By: Commission on Higher Education, Laurence M. Downes, Chair

Authority: N.J.S.A. 18A:3B-24 (P.L. 1994, c.48) and 18A:72A-49 (P.L. 1993, c.375)

Calendar Reference: See Summary below for explanation of exception to calendar  
requirement.

Proposal Number: PRN 2004 - 181

Submit written comments by July 2, 2004 to:

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The agency proposal follows:

Summary

On January 10, 1994, P.L. 1993, c.375 was enacted, establishing the Higher Education Facilities Trust Fund in the New Jersey Educational Facilities Authority. The Act authorizes the Authority to issue bonds in a total outstanding principal amount of \$220,000,000 to finance the cost, or portion of the cost, of the construction,

reconstruction, development, extension, or improvement of instructional, laboratory, communication, and research facilities. The facilities trust fund is renewable upon approval by the State Treasurer.

The rules for the Higher Education Facilities Trust Fund specify the approval process for all projects financed through the fund, requiring approval by the Commission on Higher Education before a grant from the fund can be awarded. The rules were originally promulgated by the former Board of Higher Education (BHE); subsequent technical amendments reflected the Higher Education Restructuring Act of 1994, which abolished the Board and created the Commission. The Commission has approved expenditure of the initial \$220,000,000. The current facilities trust fund rules are set to expire on January 15, 2005, pursuant to N.J.S.A. 52:14B-5.1c. The Commission proposes readoption, to ensure having rules in place for any future bond issues.

The facilities trust fund statute requires the Commission to allocate any moneys made available from new bond issues. Amendments to the current rules for the fund are proposed to remove obsolete language that reflects the original institutional and project allocations. Other obsolete language referring to the former BHE and to past dates is also proposed for deletion. A summary of the rule sections follows.

N.J.A.C. 9A:15-1.1 sets forth the chapter's purpose and authority; no amendments are proposed.

N.J.A.C. 9A:15-1.2 defines various terms used in the chapter. Proposed for deletion are definitions of the former Board of Higher Education and "South Jersey multi-institutional economic development facilities," because these terms are no longer part of the chapter's rule text. The definition of "institution" is proposed for amendment by replacing "which" with "that."

N.J.A.C. 9A:15-1.3 delineates the process for applying for grants from the Higher Education Facilities Trust Fund and specifies the information that must be included in proposals. At N.J.A.C. 9A:15-1.3(e), superfluous reference to original approvals by the former BHE is proposed for deletion.

No amendments are proposed for N.J.A.C. 9A:15-1.4, which delineates how the principal and interest on the bonds will be paid.

N.J.A.C. 9A:15-1.5 currently delineates the allocation of the first \$220 million and specifies how future allocations and reallocations will be determined. The current rule text at N.J.A.C. 9A:15-1.5(f), which expresses the Commission's authority to allocate any new facilities trust fund moneys, is proposed to replace current N.J.A.C. 9A:15-1.5(a) and (b), which concern the original allocations. At recodified N.J.A.C. 9A:15-1.5(c) and (d), references to past dates are proposed for deletion. Also proposed for deletion at recodified N.J.A.C. 9A:15-1.5(c) is reference to "South Jersey multi-institutional economic development facilities," which is obsolete

because it concerns the original allocations. N.J.A.C. 9A:15-1.5(e) would be recodified.

N.J.A.C. 9A:15-1.6 delineates the composition and responsibilities of the Higher Education Facilities Trust Fund Board; no amendments are proposed.

As the Commission has provided a 60-day comment period on this notice of proposal, this notice is exempted from the rulemaking calendar requirement, pursuant to N.J.A.C. 1:30-3.3(a)5.

#### Social Impact

More than 360,000 students are enrolled in New Jersey colleges and universities. To be prepared for careers in a global society with rapidly changing technology, New Jersey needs state-of-the-art facilities for education and research. The Higher Education Facilities Trust Fund supports instructional, laboratory, communication, and research facilities, enabling New Jersey institutions to upgrade buildings to meet student and faculty needs. All public colleges and universities and the independent institutions eligible to receive public funds under the Independent College and University Assistance Act (ICUAA) are eligible to apply for grants from the trust fund. If the trust fund is renewed, having rules in place will expedite institutional applications and project approval.

#### Economic Impact

Higher education plays a vital role in the economic development of the nation and the State by providing education and training for the workforce of the future and by advancing science and technology through research. New Jersey has an intense concentration of high technology industry and research facilities and is home to some of the world's most productive corporations. The Higher Education Facilities Trust Fund helps prepare New Jersey institutions to meet educational demands, which helps the State compete in the global marketplace. The rules prescribe how institutions may obtain facilities trust fund moneys.

#### Federal Standards Statement

The rules proposed for readoption with amendments are not subject to a Federal standards analysis under Executive Order No. 27 (1994) because the Higher Education Facilities Trust Fund was established by New Jersey legislation, is wholly supported by State appropriations, and is not subject to any Federal requirement or standards.

#### Jobs Impact

The rules proposed for readoption with amendments will not result in the generation or loss of any jobs, because the rules implementing the Higher Education

Facilities Trust Fund govern only the process eligible institutions must follow to receive approval for projects supported with facilities trust fund moneys.

#### Agriculture Industry Impact

The rules proposed for readoption with amendments will have no impact on the agriculture industry.

#### Regulatory Flexibility Statement

A regulatory flexibility analysis is not required because the rules proposed for readoption with amendments do not impose requirements on small businesses as defined by the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The rules pertain strictly to nonprofit colleges and universities in New Jersey, none of which qualifies as a small business because all have at least 100 full-time employees.

#### Smart Growth Impact

The rules proposed for readoption with amendments will have no impact on the achievement of smart growth and the implementation of the State Development and Redevelopment Plan.

Full text of the proposed readoption may be found in the New Jersey Administrative Code at N.J.A.C. 9A:15.

Full text of the proposed amendments follows (additions indicated in boldface thus; deletions indicated in brackets [thus]):

## CHAPTER 15.

### RULES AND PROCEDURES FOR IMPLEMENTATION OF THE HIGHER EDUCATION FACILITIES TRUST FUND ACT

#### 9A:15-1.2 Definitions

The following words and terms, when used in this chapter, shall have the following meanings unless the context clearly indicates otherwise.

. . .

[“Board” means the former State Board of Higher Education.]

. . .

“Institution” means a public or private institution of higher education [which] that is eligible to receive State aid.

. . .

[“South Jersey multi-institutional economic development facilities” means facilities which would promote economic development in the eight southernmost counties of the State, including Atlantic, Burlington, Camden, Cape May, Cumberland, Gloucester, Ocean, and Salem, and which involve more than one public and/or private institution of higher education.]

. . .

#### 9A:15-1.3 Process for application for grant

(a) – (d) (No change.)

(e) The total dollar amount of a grant approved for any institution shall not exceed the institution’s allocation as approved by the [Board (for allocations made before July 1, 1994) or] Commission.

(f) – (k) (No change.)

#### 9A:15-1.5 Allocation of funds

[(a) The money deposited into the fund created pursuant to section 3 of the Amending Act shall initially be allocated in the following manner:

1. \$48,000,000 for facilities at the State colleges;
  2. \$38,880,000 for facilities at Rutgers, the State University;
  3. \$20,160,000 for facilities at the University of Medicine and Dentistry of New Jersey;
  4. \$12,960,000 for facilities at the New Jersey Institute of Technology;
  5. \$44,000,000 for facilities at the county colleges;
  6. \$21,000,000 for facilities at private institutions of higher education;
- and
7. \$15,000,000 for South Jersey multi-institutional economic development facilities.
  8. \$20,000,000 for a new facility for Rutgers, the State University, School of Law, Newark.

(b) The Commission shall, by resolution, allocate funds to individual State colleges, county colleges, and private institutions of higher education within the sector allocations above.]

(a) The Commission shall determine the allocation of money available from the authorization of new bonds by the Treasurer as a result of the retirement of bonds previously issued by the Authority pursuant to the Amending Act.

[(c)] (b) The Commission may reallocate [to any institution or to the “South Jersey multi-institutional economic development facilities”] any balance in the amounts authorized if the amounts are not approved by the Commission for a grant within 18 months of the [effective date of the Amending Act (January 10, 1994) or within 18 months of subsequent] allocations made by the Commission.

[(d)] (c) No reallocation shall be made pursuant to [(c)] (b) above if:

1. The grant application has been received by the Commission [within 15 months of January 10, 1994 or] within 18 months [with respect to any amounts that are subsequently allocated by the Commission] of the allocation; or

2. – 3. (No change.)

[(e)] (d) (No change in text.)

[(f) The Commission shall determine the allocation of money available from the authorization of new bonds by the Treasurer as a result of the retirement of bonds previously issued by the Authority.]